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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1348

WORLDWIDE CHURCH OF GOD, INC., ET AL.,
PETITIONERS,

vs.

STATE OF CALIFORNIA, ET AL.,
RESPONDENTS.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District, Division Three

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE OF

CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS

AS AMICUS CURIAE IN SUPPORT OF GRANTING CERTIORARI

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TABLE OF CONTENTS

Table of Authorities iii

Motion for Leave to File Brief Amicus Curiae of Catholic League for Religious and Civil Rights .. 2

Introduction 6

Statement of the Case 7

Question Presented 9

Summary of Argument 10

Argument 11

I. California's Public Trust Doctrine Ignores Affirmative Free Exercise Limitations on Doctrinal and Administrative Entanglement In the Affairs of

Religion 11

II. California's Public Trust Doctrine Generates An Impermissible Chilling Effect on First Amendment Rights ... 18

III. California's Public Trust Doctrine Is Constitutionally Overbroad Because It Regulates Protected Religious Exercise and Association ... 19

TABLE OF AUTHORITIES

CASES

Akron Center for Reproductive Health v. City of Akron, 479 F.Supp. 1172 (1979)..... 14

Board of Education v. Allen, 392 U.S. 236 (1968)..... 12,13

Coates v. Cincinnati, 402 U.S. 611 (1971) 18

Committee for Public Education & Religious Liberty v. Regan, 48 U.S.L.W. 4168 (1980)..... 13

Everson v. Board of Education, 330 U.S. 1 (1947)..... 13

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978)..... 12

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) 14,15

Lemon v. Kurtzman, 403 U.S. 602 (1971) 13

Lovell v. Griffin, 303 U.S. 444 (1938) 21

McDaniel v. Paty, 435 U.S. 618 (1978) 14,16

Niemotko v. Maryland, 340 U.S. 268 (1951) 21

N.L.R.B. v. Catholic Bishop of Chicago, 440 U.S. 490 (1979)..... 13,15

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969)..... 14,15

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) 13-15

Sherbert v. Verner, 374 U.S. 398 (1969) 16,20

Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969) 21

State of Ohio v. Whisner, 47 Ohio St. 2d 181, 351 N.E. 2d 750 (1976) 16

Thornhill v. Alabama, 310 U.S. 88 (1940) 18

United States v. Ballard, 322 U.S. 78 (1944) 13

Walker v. Birmingham, 388 U.S. 307 (1967) 21

Wisconsin v. Yoder, 406 U.S. 205 (1972) 15,20

STATUTES

United States Constitution Amendment I 2-22

California Corporation Code Section 9505 20,21

California Non-profit Religious Corporation Law Section 9230 (effective January 1, 1980) 20,21

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MOTION TO FILE BRIEF AMICUS CURIAE

Pursuant to Rule 42 of the Rules of this Court, the Catholic League for Religious and Civil Rights ("Catholic League") respectfully moves this Court for an order granting it leave to file the attached brief in support of the petition for certiorari.

The Catholic League for Religious and Civil Rights, a non-profit, tax-exempt California corporation with its headquarters in Milwaukee, Wisconsin, is a voluntary membership organization dedicated to the defense of the rights of all persons of religion and the education of the public respecting issues of religious freedom. The Catholic League's membership currently stands at approximately 30,000 nationwide. Its interest and expertise in cases such as the one at bar is derived from the concerns of both its members and the defense of its clients' First Amendment rights.

In the view of the Catholic League, this case presents free exercise and associational questions of the highest magnitude. It is not a party to any of the pend-

ing actions, but if the Public Trust Doctrine disputed here is accepted, it may be called upon to defend the rights of other religious organizations facing investigations more or less sweeping than the one involved here.

For the foregoing reasons, as well as the reasons submitted in the attached brief, the Catholic League respectfully urges that the Court grant its motion for leave to file the attached brief amicus curiae urging the Court to grant the petition for a writ of certiorari.

CONSENT TO FILE THIS BRIEF
OF AMICUS CURIAE WAS REQUESTED
OF THE PARTIES BUT NOT RECEIVED

This moving party requested permission of the parties to this matter to file a brief amicus curiae in connection with the

petition for a write of certiorari. Petitioners gave their consent, but respondent, State of California, declined to do so. This motion is accordingly submitted.

Respectfully submitted,

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Of Counsel

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CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS

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INTRODUCTION

The Catholic League for Religious and Civil Rights ("Catholic League") has moved this Court for an order permitting it to file a brief, as amicus curiae, in support of defendants' petition for a writ of certiorari to the California Court of Appeal. The brief which follows is, necessarily, short and contains only those arguments which, in the view of your amicus, most strongly support the granting of the requested writ.

The constitutionality of the Public Trust Doctrine is the issue in this case. Your amicus submits that settled free exercise and association principles require both plenary consideration of the case on its merits and eventual repudiation of the overly broad and intrusive theories which prompted the California Attorney General to institute this unfortunate litigation.

STATEMENT OF THE CASE

The State of California, through its Attorney General, asserts that all churches and religious organizations are public charitable trusts, i.e., all church property is public property and a church has no private rights. Under this theory, the State is empowered to oversee and supervise all churches in the management of their assets and, therefore, to audit, examine, and control all church activities. The challenged orders reflect the approval of these principles by the California courts.

Following these principles, the California Attorney General filed the subject action based on information from six disaffected church members. The action sought to compel an accounting from the church by means of a court-ordered audit and examination of church finances. The State also secured an *ex parte* appointment of a receiver who assumed complete control of the church. The State, then embarked upon a massive program compelling the disclosure

of such things as all minutes of church meetings from the preceding twenty-two years, records reflecting the source, amounts and application of contributions to the church, and records indicating the disposition of funds pursuant to church welfare programs.

All appeals to higher courts have to date been unavailing and this petition is the last remaining barrier to a wholesale application of the principles of the California Public Trust Doctrine.

QUESTION PRESENTED

Can California's Public Trust Doctrine and its corollaries be lawfully applied to all churches and religious organizations without violating the First Amendment guarantee of free exercise of religion?

SUMMARY OF ARGUMENT

Your amicus submits that the case should be considered within the framework of traditional free exercise analysis.

In the view of your amicus, California's Public Trust Doctrine ignores affirmative free exercise limitations on doctrinal and administrative entanglement in the affairs of religion.

It is also overbroad because it chills and regulates protected religious exercise and association, exposing the innermost administrative and doctrinal processes of a religious organization to governmental scrutiny. Your amicus submits that the foregoing free exercise analysis is preferable to an establishment analysis in that an establishment analysis assumes the existence of governmental power to interfere with the internal workings of an unquestionably religious organization. That assumption, we submit, is the very issue presented in this case.

I. CALIFORNIA'S PUBLIC TRUST DOCTRINE IGNORES AFFIRMATIVE FREE EXERCISE LIMITATIONS ON DOCTRINAL AND ADMINISTRATIVE ENTANGLEMENT IN THE AFFAIRS OF RELIGION

> The Court is the ultimate custodian of all church funds, just as the Attorney General has always been charged with the power and the duty to investigate allegations of misuse or even suspicions of misuse.
>
> ***
>
> ... [T]he church, as a charitable trust, has no interest to protect here. It has no client. It is the court's funds and the court may remove and replace substitute trustees at its pleasure." [Appendix of Petitioner at 172(b).[1]]

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[1] All references to the Appendix are to that of the Petitioners' Worldwide Church of God, *et al.*, unless otherwise noted.

The foregoing excerpt is the keystone of the argument of the State of California in this case. Essentially, its argument is that the church is the creature of the state, rather than a voluntary association of believers, and that the State may intervene whenever it entertains "suspicions of misuse" of church assets. Your amicus submits that this theory is untenable, and that this Court should grant the requested writ in order to preserve the autonomy of religious organizations to direct their own affairs. *Cf., First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978).*

California's Charitable Public Trust Doctrine, as applied to the affairs of churches, whether established, incorporated or organized in less formal fashion, represents a continuing threat to the free exercise of religion guaranteed by the First Amendment to the Constitution of the United States. It subjects the continuing operations of church bodies to the constant threat of government investigation, supervision, and control when, as here, someone

alleges or suspects "misuse". In the view of your amicus, such a practice poses grave threats to the free exercise of religious beliefs.

The inability of the state to comprehend the nature and depth of religious beliefs, teachings, and practices was recognized by this Court in *United States v. Ballard, 322 U.S. 78 (1944)*, and a determination regarding the allegedly "proper" or "improper" adminstrative use of church assets inexorably leads to scrutiny of the doctrinal bases for given allocations or programs. *Compare, e.g., N.L.R.B. v. Catholic Bishop of Chicago, 440 U.S. 490 (1979); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); Lemon v. Kurtzman, 403 U.S. 602 (1971); with, e.g., Committee for Public Education & Religious Liberty v. Regan, 48 U.S.L.W. 4168 (1980); Board of Education v. Allen, 392 U.S. 236 (1968); Everson v. Board of Education, 330 U.S. 1 (1947).* The representatives of the state do not necessarily share the same values and beliefs as church members, and the centrality of shared religious values among

church members makes it virtually impossible for the state to be either an impartial administrator of church affairs, *see, Serbian Eastern Orthodox Diocese v. Milivojevich, supra; Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952)*, or for it to attempt to control public manifestations of doctrinal values. *See, e.g., McDaniel v. Paty, 435 U.S. 618 (1978); Akron Center for Reproductive Health v. City of Akron, 479 F.Supp. 1172 (1979) (rejecting religious "divisiveness" argument regarding regulatory legislation).*

In the case at bar, California has arrogated privately held church property to itself, and now seeks to administer it for the "protection", not of the members of the Worldwide Church of God, but of the "People of the State of California". The desires and opinions of the members of the Church are essentially irrelevant. *(See App. at 198b, 204-205b).* The Superior Court, in clear violation of the teachings of

N.L.R.B., Kedroff, Presbyterian Church, and Milivojevich, supra, asserts its own power to resolve "any dispute [which] arises between the receiver and the ecclesiastical authorities of the church over whether or not a particular matter is, in fact, ecclesiastical in nature", and purports to be authorized to pay for its unconsitutional interference from the funds of the church itself! *(App. at 188b).*

The authorization of fundamental violations of the Free Exercise Clause inherent in the orders of the Superior Court entered in the hope of "saving" the church from its leaders [App. 198b] is analagous to the type of free exercise violation forbidden by this Court in *Wisconsin v. Yoder, 406 U.S. 205 (1972).* In *Yoder* it was recognized that "if the State is empowered, as *parens patriae*, to 'save' a child from himself or his ... parents; ... the State will in large measure influence, if not determine, the religious future of the child." *406 U.S. at 231-232.* Your amicus submits that the same rule applies here, for the State of California has undertaken to su-

pervise and entirely restructure the World-wide Church of God in the name of "saving" it.

In the case at bar, independent ecclesiastical thought is subjected to the watchful eye of the receiver and Superior Court. No church can survive the inherently suffocating grasp of the state for long, and it is precisely for this reason that traditional free exercise analysis should be applied in this case. *Compare, State of Ohio v. Whisner, 47 Ohio St. 2d 181, 351 N.E. 2d 750 (1976).*

If California authorities have reason to believe that there has been criminal activity among the leadership of the World-wide Church of God, the criminal process is available to protect the State's interests. It is well-settled that where religious rights are at stake, a state may only seek to satisfy compelling interests through the least burdensome alternative. *McDaniel v. Paty, supra; Sherbert v. Verner, 374 U.S. 398 (1969).* In the case at bar, criminal prosecutions, where appropriate, are clear-

ly less intrusive of the First Amendment rights of both the Church as an institution, and the rights of its members than the sweeping receivership involved here.

Your amicus respectfully submits, therefore, that the writ should be granted and that full consideration be given to the merits prior to enforcement of further orders by the Superior Court.

II. CALIFORNIA'S PUBLIC TRUST DOCTRINE GENERATES AN IMPERMISSIBLE CHILLING EFFECT ON FIRST AMENDMENT RIGHTS.

The continuing threat that §§9505 and 9230 will be applied generates a chilling effect on the free exercise of rights protected by the Constitution -- freedom of religion, assembly, and association. This statute is "... an obvious invitation to discriminatory enforcement against those whose association together is 'annoying' because their ideas, their lifestyle or their physical appearance is resented by the majority of their fellow citizens." *Coates v. Cincinnati, 402 U.S. 611, 616 (1971).* The "pervasive threat" that the State of California will arbitrarily apply the Public Trust Doctrine to the downtown basilica or the neighborhood Bible meeting has a chilling effect on the exercise of First Amendment rights, *Thornhill v. Alabama, 310 U.S. 88, 97 (1940)*, especially where, as here, there are absolutely no standards to guide and confine the discretion of either the Attorney General or the courts.

III. CALIFORNIA'S PUBLIC TRUST DOCTRINE IS CONSTITUTIONALLY OVERBROAD BECAUSE IT REGULATES PROTECTED RELIGIOUS EXERCISE AND ASSOCIATION

The Public Trust Doctrine holds that all of the property of a non-profit corporation is held in trust by the state. As applied in this case, the doctrine is the ultimate interference with the free exercise of religion. The State does not "establish" a religion, but interferes with the ongoing decisions of an organization whose activities are protected by the First Amendment. The members of the religious organization and its hierarchy should make decisions and judgments as to what is in the best interests of the church, whether it be the sale of assets, the funding of religious programs and, even such minutae as the furnishing of the residences of the hierarchy.

Although the state has an interest in protecting its citizens from fraud, the First Amendment mandates that the means chosen to protect that interest be limited to those which are least intrusive into the internal affairs of the church. *Wisconsin*

v. Yoder and Sherbert v. Verner, supra.

In the case at bar, the State has available to it a set of highly specific, articulated standards -- the criminal law -- which would serve its interest in protecting its citizens from charlatanism while accommodating First Amendment freedoms. The State has demonstrated no compelling interest as to why the body of criminal law and procedure which governs every other facet of society would not suffice to investigate its suspicions of wrongdoing among the church's hierarchy. It is incumbent upon the State to show that no alternative forms of regulation and/or investigation would combat such suspected abuses. *Sherbert, supra.*

Sections 9505 and 9230 are constitutionally overbroad in that these statutes regulate religious activities which are protected from regulation by the First Amendment to the Constitution. They grant unfettered discretion to a receiver who makes decisions ranging from the merely operational to the unquestionably doctrinal to the decidedly trivial. There are "no

standards", "no narrowly drawn limitations", "no substantial interest of the community to be served" within the parameters of §§9505 and 9230. *Niemotko v. Maryland, 340 U.S. 268, 272 (1951); see also, Lovell v. Griffin, 303 U.S. 444 (1938). Cf., Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969).* Rather, we find two statutes which, on their face, make no distinction between decisions made by the receiver which are constitutionally permissible and those which undeniably intrude upon First Amendment rights. The Public Trust Doctrine, as codified in Cal. Corp. Code §§9505 and 9230 and as enforced by the Superior Court below, is constitutionally overbroad on its face. It should not be enforced merely because "the State [has taken] the precaution to have some judge append his signature to an *ex parte* order which recites the words of the invalid statute". *Walker v. Birmingham, 388 U.S. 307, 346 (1967) (Brennan, J. dissenting).*

CONCLUSION

For all the reasons set forth in the foregoing brief, your amicus respectfully submits that the petition for certiorari should be granted and that full consideration on the merits be given the issues presented.

Respectfully submitted,

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